

**NOTICE OF PUBLIC RULEMAKING HEARING
BEFORE THE STATE ENGINEER**

Regarding the Water Administration Fee Program

SUBJECT:

In accordance with section 24-4-103, C.R.S. (2003), the State Engineer hereby gives notice of rulemaking proceedings to adopt The Rules Governing the Water Administration Fee Program ("Rules"). A copy of the proposed Rules is attached hereto and incorporated herein.

STATUTORY AUTHORITY

Section 37-80-121, C.R.S. (2003) authorizes the State Engineer to adopt these Rules.

PREHEARING CONFERENCE AND HEARING SCHEDULE:

Prehearing Conference

November 24, 2003, 10:00 AM – 3:00 PM
Office of the Attorney General
1525 Sherman Street, Room 610
Denver, Colorado 80203
303-866-4500

Hearing

December 1, 2003, 10:00 AM – 5:00 PM
Office of the Attorney General
1525 Sherman Street, Room 610
Denver, Colorado 80203
303-866-4500

For directions to these locations, please call Susan Garcia at 303-866-3581.

PUBLIC COMMENT

The State Engineer encourages all interested persons to provide their views either orally at the hearing or in writing prior to or at the hearing. The State Engineer will hear public testimony. The State Engineer requests written testimony to be submitted prior to the hearing to allow review by the State Engineer prior to the hearing. Such written testimony should be mailed at least 7 days prior to the hearing to: State Engineer, 1313 Sherman Street, Room 818, Denver, Colorado 80203, Attn: Ken Knox. A person need not obtain party status to comment orally at the hearing, but may be limited to a brief amount of time for such comments at the discretion of the State Engineer. Persons with party status will be allowed a set amount of time for direct and rebuttal testimony, cross-examination, and presentation of exhibits at the hearing.

PARTY STATUS

Any person who wants to present testimony and exhibits at the hearing must obtain party status. To obtain party status, a person must submit a written notice of party status to the State Engineer, 1313 Sherman Street, Room 818, Denver, Colorado 80203, Attn: Ken Knox, on or before November 12, 2003. The notice of party status must:

- 1) identify the party and provide the party's address, telephone and facsimile numbers, and email address;
- 2) describe how the proposed Rules affect or otherwise impact the party's interests; and
- 3) briefly summarize, if any, the policy, factual and legal issues concerning the proposed Rules that the party intends to raise at the hearing.

All Parties must submit a prehearing statement and attend the prehearing conference as set forth below. The State Engineer reserves the right to deny party status to anyone who does not comply with the procedures outlined in this Notice of Rulemaking. The State Engineer may waive any procedural requirement set forth herein upon a written motion showing good cause. The State Engineer's Staff automatically has party status in this rulemaking proceeding.

PREHEARING STATEMENT

On or before November 18, 2003, each Party must submit a prehearing statement to the State Engineer containing the following:

- 1) a statement of the factual and legal claims the Party intends to assert;
- 2) all exhibits to be introduced at the hearing;
- 3) a list of persons who will testify on behalf of that Party and a brief summary of each person's testimony;
- 4) all written testimony the Party will offer into evidence; and
- 5) all proposed alternative language or proposed changes to the revisions to the Rules.

Each Party must serve copies of the prehearing statement and all exhibits and documents to all other Parties on or before November 18, 2003. Parties' names and contact information may be obtained from Ken Knox or Alison Needham at the Division of Water Resources, (303) 866-3581, and will be posted on the Division of Water Resources website at <http://www.water.state.co.us/wateradminfees.asp>. The State Engineer will not accept any additional documents, exhibits or other materials after the prehearing conference except for good cause shown. Parties must submit any motions or requests for rulings concerning these rulemaking proceedings to the State Engineer, with copies served on all Parties, by November 18, 2003. This includes motions regarding procedures, the scope and nature of the proceedings, or any other matter that requires the State Engineer to make a determination prior to the hearing.

PREHEARING CONFERENCE

The State Engineer will hold a prehearing conference on November 24, 2003 at 10:00 AM to identify and discuss the issues; to formulate stipulations respecting those issues, if possible; to identify persons who will testify and exhibits to be presented by Parties at the hearing; and to allot time to each Party for oral presentation at the hearing. All persons with party status, or representatives of such persons, must attend the prehearing conference. The State Engineer, or, at his direction, another person, may prepare a prehearing order based on the prehearing conference that shall set forth any rulings made by the State Engineer with respect to procedures to be followed at the hearing or any other matters.

CONDUCT OF HEARING

The State Engineer will conduct the rulemaking hearing in accordance with section 24-4-103, C.R.S. (2003). Persons other than Parties who wish to comment orally at the hearing must sign up to do so at the beginning of the hearing. The State Engineer will hear public comment after the parties testify. At his discretion, the State Engineer may limit the time for public comment based upon the number of persons who intend to comment.

Each Party may use its allotted time as desired for direct testimony, cross-examination of persons testifying on behalf of other Parties, and rebuttal testimony, but may not exceed the allotted time unless permitted to do so by the State Engineer. At its discretion, the State Engineer may limit the allotted time for testimony.

Subject to Section 24-4-103, C.R.S. (2003), the State Engineer may modify the proposed Rules prior to promulgating final Rules. The State Engineer will submit the final Rules to the Secretary of State for approval after the Attorney General issues a rule opinion on the Rules.

NATURE AND DESCRIPTION OF PROPOSED RULES

On May 1, 2003, Governor Owens signed into law Senate Bill 03-278, which creates the Water Administration Fee Program. These Rules effectuate SB 03-278, which is codified at sections 37-80-121, 37-92-502 and 37-92-503, C.R.S. (2003). These sections authorize the State Engineer to collect an annual water administration fee and to promulgate rules necessary to establish the Water Administration Fee Program.

These Rules include (1) definitions of relevant terms and procedures; (2) fee amounts; (3) a schedule for fee payments; (4) notification and invoicing procedures; and (5) procedures to appeal the imposition of a fee if believed improperly assessed. The Rules also address the State Engineer's authority to collect water administration fees; the deposit of fees collected under the program into the water administration cash fund; and expenditures of money from that fund on costs associated with the State Engineer's administration of decreed water rights. Finally, the Rules outline the reporting requirements the State Engineer must follow under Senate Bill 03-278.

For a complete review of the proposed Rules, please see the attached proposed Rules.

AVAILABILITY OF PROPOSED RULES

Copies of the proposed Rules are available to any person for inspection and purchase at the Division of Water Resources, 1313 Sherman Street, Room 818, Denver, Colorado 80203.

Dated this 17th day of October 2003.

Hal D. Simpson, State Engineer

All programs, services and activities of the State Engineer are operated in compliance with the federal Americans with Disabilities Act. If you need a special accommodation as a result of a disability, please call Susan Garcia at (303) 866-3581. To assure that we can meet your needs, please notify us of your request at least 7 days in advance.